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# PART I: CHAPTER 2

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## Designing an ADR Program<sup>1</sup>

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### I. Introduction

This chapter outlines a four-step process for designing an ADR program. It does not contain a standard or model design, because what works well for one organization may not work as well, if at all, for another. Organizations are structured differently with different needs and interests. To be effective, the ADR program design must be tailored to reflect the organization's unique character. If this step-by-step approach is followed, it will provide structure and direction to the design process.

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### II. Four Step Process

#### STEP 1: Needs Assessment

The first step in designing an ADR program is to identify the agency's dispute resolution needs and concerns. A comprehensive needs analysis will address both organizational and dispute resolution issues; it will consider the mission and structure of the agency as well as the current dispute resolution system. The following issues should be included in the needs assessment:

#### A. Agency Mission and Structure

An ADR program must further the agency's mission if it is to be successful and valuable to the agency. To do this, the designer must identify and consider:

- the agency's mission;
- the agency's dispute resolution goals;
- the authority necessary to approve the design
- the ultimate decisionmakers;
- the key advisors and managers who report to the decisionmaker;
- the agency's conflict management culture (i.e. never settle, never negotiate);

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<sup>1</sup> This section was authored by Martha McClellan, Counsel, ADR Unit, Federal Deposit Insurance Corporation.

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- the agency's definition of success;



- the agency's typical response to change; and
- the agency's attitude toward participatory processes.

### **B. Agency ADR Interests**

A clear understanding of the agency's ADR interests is essential to developing a program design that will accomplish the agency's dispute resolution goals and objectives. The agency's ADR interests should be identified and expressed in simple statements; the agency's interests could include:

- reducing the number of complaints/grievances/lawsuits;
- reducing the cost of resolving disputes;
- reducing the time for resolving disputes;
- improving or maintaining relationships; and
- complying with law and/or regulations.

### **C. Nature and Number of Agency Disputes**

It is important to identify the different kinds of disputes your agency encounters and which of these (if not all) are to be addressed in the proposed ADR program. For example, an agency may choose to limit its initial ADR program to EEO matters in order to comply with recent changes in EEOC regulations. A dispute resolution assessment should include the following issues:

- sources of disputes (e.g. procurement contracts, internal workplace disputes);
- number of disputes;
- frequency of disputes; and
- parties to the disputes.

### **D. Current Dispute Resolution Systems**

One purpose of the proposed ADR program should be to resolve disputes better than under the existing dispute resolution process. To do this, it is necessary to examine the existing system and identify problems that can be corrected or alleviated with an effective ADR system. The current system may take too long; it may be too expensive; it might not comply with new statutory or regulatory requirements. A dispute resolution assessment should include:

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- how disputes are currently handled;
- how long it takes to resolve disputes;
- how much it costs to resolve disputes (including litigation costs, personnel time, management effort, employee morale, and customer satisfaction);
- who pays the cost of resolving disputes;
- who has authority to resolve disputes;
- how disputes/resolutions are tracked;
- whether there are written guidelines for resolving disputes; and
- whether any form of ADR is currently being used?

### **E. Alternatives to the Current Dispute Resolution System**

There are many ADR choices available, and it is important to have a clear understanding of each ADR method in order to choose the most appropriate ones for your program. The following questions should be addressed in choosing an ADR method:

- What types of disputes will be included in the program?
- Will the disputes involve factual question or legal questions or both?
- What types of settlements will be available in the program?
- What is the goal of the program (e.g. to offer an opportunity to negotiate a settlement; to submit the dispute for a non-judicial decision)?
- How much involvement will the disputants want to have in the process?
- How much control will the disputants want to have in the decisionmaking and settlement of the dispute?
- Will the disputants want an imposed process (i.e. a third party to render a decision as in arbitration)?

- Will the disputants want an interest-based or rights-based approach?

For more information on types of ADR and choosing an ADR process see *Manual, Part III, Chapter 1, Glossary of Terms and Techniques*.

### **F. Assistance and Barriers**

An ADR program represents a change in the way an agency responds to conflict or disputes. Some organizations, like some people, welcome change and relish trying new things, but many do not. Even in those agencies where change is not perceived as threatening, there will be personal and organizational resistance to the new program. The designer must work with all the stakeholders to identify potential sources of resistance and the form it will likely take. Also, institutional barriers or constraints must be identified and strategies developed to overcome them.

It is equally important to identify sources of support, including existing incentives and rewards, for the use of ADR. If the current system does not appear to be sufficient to encourage widespread participation, new or different incentives and rewards should be developed with the assistance of management.

Designers should consider the following sources of resistance and types of constraints:<sup>2</sup>

- resistance based on fear (e.g. of the unknown, change);
- resistance based on organizational culture (e.g. never negotiate unless liability is clear and then argue over money);
- resistance based on perceived loss of power;
- resistance based on personality preference ("I don't like ADR because...");
- resistance based on dominant organizational symbols, images and metaphors ("ADR doesn't feel right in this agency because...");

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<sup>2</sup> This discussion of resistance, constraints, incentives and awards is based on Chapters 11 and 12 of Designing Conflict Management Systems, Costantino, Cathy A. and Merchant, Christina Sickles, Jossey-Bass (1996). Please refer to these chapters for a detailed discussion of these topics. Table 12.1 of Chapter 12 is particularly helpful in identifying sources of resistance and constraints and in suggesting possible actions to overcome them.

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- structural constraints (e.g. the ADR option has been inserted in the wrong place in the dispute process);
- resource constraints ("not enough time, money, personnel to do ADR");
- leadership constraints (e.g. no commitment from top management); and
- transition constraints ("the ADR system is too complex, too awkward, etc.").

Designers should consider the following issues concerning incentives and rewards:

- incentives encourage future behavior;
- rewards recognize past behavior;
- tailor the incentives or rewards to the employees they are meant to motivate;
- consider incentives and rewards for outside (non-agency) stakeholders;

Incentives and rewards might include:

- recognition for involvement or results;
- inclusion as a member of the team;
- opportunity to be involved in a new initiative;
- opportunity to assist in achieving organizational mission;
- opportunity to fulfill personal vision and values (e.g. helping agency develop a more collaborative approach to dispute resolution and prevention);
- opportunity to help agency become more efficient and effective;

- opportunity to receive monetary or other tangible economic benefit;
- positive publicity for all disputants;
- opportunity for all disputants to benefit from more efficient and effective settlements;
- opportunity for outside disputants to gain access to agency decisionmakers; and
- opportunity to improve relationships.

### **STEP 2: Program Design**

The results of the needs assessment will provide the answers to many of the questions raised in Part I and will be the basis for the ADR program design. The design must be in writing and in the appropriate format. The format will vary depending upon the purpose of the document (i.e. to propose a new program or to outline a pre-approved program) and may take the form of a memorandum, proposal, directive, or other appropriate document. The following is a checklist of issues that the designer may want to consider and/or address in the written document:

- **ADR policy:** A written ADR policy, supported by agency decisionmakers, will underscore the agency's commitment to using ADR and to the importance of the new ADR program. The design should recommend and/or contain a policy statement if the agency does not have one in place.
- **ADR laws and regulations:** The design also should contain a brief background discussion on any applicable or pertinent ADR laws, statutes, and regulations (e.g. ADRA, EEOC Regulation 1614).
- **Program goals and objectives:** A clear statement of the program goals and objectives will inform all stakeholders of the importance of the program and of what the agency hopes to accomplish by using ADR.
- **ADR method:** The design should include a discussion of what ADR is, what the various ADR options are, which ADR method will be used in the program, and why that particular ADR method is most appropriate for this program.



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- Program administration: The design should set out clearly the roles and responsibilities of everyone involved in the program's administration. This would include the program administrator, the person responsible for overall coordination of the program, and site administrators, the person(s) responsible for day to day implementation of the program in field sites or diverse offices.
- Case selection: The design should include a description of the types of cases to be included in the program. Case selection criteria and procedures should be clearly stated. They might include: the types of cases to be included, any criteria for excluding individual or classes of cases, who can request ADR, and who has authority to deny a request.
- Neutral selection: The design should state the sources for securing neutrals and should address the numerous issues involved in selecting, paying, overseeing, and evaluating qualified neutrals. *See Manual, Part II, Chapter 3, Obtaining Neutral Services.*
- Program procedures: The design should include all the necessary procedures for administering, using, and evaluating the program. *See Manual, Part II, Chapter 5, Supporting ADR Program Users.*
- Settlement authority and approval: The design should clearly identify how authority to settle can be obtained and who is authorized to approve the settlements.
- Training and marketing: Training plans should be developed to meet the educational needs of all stakeholders and might include awareness training, user skills training, advocacy skills training, and neutral orientation or training. A marketing plan should be developed to inform potential users that the program is available and to promote its use. *See Manual, Part II, Chapter 1, Garnering Support for ADR, and Manual, Part II, Chapter 2, Creating a Comprehensive ADR Training Program.*
- Pilot project: If the program is to be tested before it is implemented throughout the agency, the design should include a plan for a pilot project. *See Manual, Part II, Chapter 4, Constructing Pilot Projects.*
- Funding and resources. The design should address the funding and resources necessary to implement the program, and should

include a proposed budget and staffing chart, if appropriate. *See Manual, Part II, Chapter 6, Obtaining Resources and Developing Contracts.*

- Tracking and evaluation. The design should contain a tracking and evaluation plan that will capture both quantitative and qualitative data about the program administration, the services provided, and program results. *See Manual, Part 2, Chapter 8, Evaluating ADR Programs.*
- Implementation of the program: The design should include a plan that addresses the steps the agency will take to implement the program throughout the agency. *See Manual, Part I, Chapter 2, Step 3: Program Implementation, and Manual, Part II, Chapter 5, Supporting Users of ADR.*

### **STEP 3: ADR Program Implementation**

The plan outlined in the design proposal should address all the steps the agency will take in implementing the permanent program. Problems in the design and implementation stage are inevitable and are best discovered and resolved in a pilot test before the program is offered to the entire agency. If a pilot program has been successfully completed, agency-wide implementation should be a relatively easy transition for all the stakeholders. However, implementation without the benefit of prior testing can also go well. If the design process has been a collaborative one that addressed the concerns of all major stakeholders, the program will have broad support from all management levels and from all potential participants. The following issues are important for designers and program managers to consider during the implementation stage:

- Management support: Key managers and senior decisionmakers need to be educated about ADR and the new ADR program to ensure support from all levels of management. As in any new endeavor, the active support of high-level management underscores the importance of the program and encourages buy-in from both management and staff.
- Program manager: The program manager should be identified early in the development of the implementation plan and should be an experienced ADR specialist. The program manager should have both the responsibility and authority for managing all aspects of the program. The program manager will play a critical role in the marketing of the program and should be

comfortable working with stakeholders both inside and outside the agency.

- **Training:** Training must be provided to all stakeholders and potential program users to ensure their understanding of ADR and the new ADR program. It is important to time the training programs so they fit into the appropriate stage of the process. For example, ADR awareness training should be provided early in the process to promote acceptance and buy-in of the program. *See Manual, Part II, Chapter 2, Creating a Comprehensive ADR Training Program.*
- **Marketing:** "If you build a great program and no one comes, the program will fail."<sup>3</sup> Marketing and educational efforts should be carefully planned and coordinated to help ensure support and use of the new program. Publicizing success stories is an effective way to show the benefits of using ADR to resolve agency disputes. Another way is to publicize the incentives and rewards developed as part of the program design. *See Manual, Part II, Chapter 1, Garnering Support for ADR.*
- **Program procedures and standard forms:** Program procedures should be clearly articulated and easy to follow. The procedures should also include a description of the responsibilities of all involved parties. Case selection criteria, neutral selection criteria, case referral forms, evaluation and feedback forms are some of the standard forms which might be included in the program procedures. *See Manual, Part II, Chapter 5, Supporting Users of ADR.*
- **Neutral selection and training:** Criteria for selecting qualified neutrals should be developed and explained to those responsible for obtaining appropriate neutrals. Neutrals should be offered training or orientation sessions to familiarize them with the program procedures. This training should include a discussion of the agency's goals for the program as well as substantive and programmatic issues such as confidentiality, ethics, procurement procedures, and evaluation. *See Manual, Part II, Chapter 3, Obtaining Neutral Services.*
- **Evaluation, tracking, and reporting:** The program design should contain a plan for objective ways to evaluate the ADR program.

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<sup>3</sup> United States Postal Service Implementation Workbook.

This plan should contain procedures and standard reporting forms for collecting the necessary data. Reports should be tailored to provide data on the impact of the program -- its efficiency, effectiveness, and customer satisfaction, and on the ADR program's administration -- its functional organization, service delivery, and program quality. *See Manual, Part II, Chapter 7, Ethical Considerations.*

### **STEP 4: ADR Program Evaluation**

Federal initiatives such as the Government Performance and Results Act of 1993 (GPRA), encourage increased efficiency and accountability of federal entities. These initiatives emphasize the need for reliable accountability beginning at the program level. ADR program evaluations are conducted to answer fundamental questions about a program's effectiveness, e.g., does the program provide a necessary or useful function, is the program accomplishing its goals, is the program being administered effectively. A comprehensive evaluation system measures tangible and intangible benefits, including customer satisfaction, using both quantitative and qualitative data. To be a useful, effective management and planning tool, an evaluation system must do more than provide comparison data. It also must provide a flexible process for reevaluating the goals of the program, modifying the evaluation methodology, and implementing necessary changes. The following factors should be considered in a comprehensive evaluation system:

- Identification and clarification of ADR program goals: Because the purpose of any program evaluation is to measure how well the program is fulfilling its goals, it is essential that those goals and objectives be clearly identified so that useful conclusions can be drawn from the data collected.
- Development of an appropriate methodology: Once ADR program goals are clearly defined, the next step is to develop an appropriate evaluation methodology. It is necessary to determine what is to be measured, what are the sources of the data, and how is the data to be collected. Appropriate measures might include: the service or activity to be measured (e.g. training and education); the measuring variables (e.g. what kind and how many courses); quantitative sources for data; and qualitative sources for data. Appropriate sources for data may include surveys, status reports, statistical logs, and feedback questionnaires.

- Development of an analysis plan: methods of data analysis vary from simple descriptive tabulations to complex multivariate methods. In developing an analysis plan, it may be useful to draw a distinction between research methodologies and program analysis. Research methodologies traditionally are based on experimental designs to provide statistically reliable results. Program analysis, while producing quantifiable results, must go beyond a bare assessment of program outcomes to explaining the outcomes and offering suggestions for program improvement. The evaluation system design will need to take into account the agency's need for reliable quantitative data and the limited time, money, and resources that may be available to identify, collect, and analyze appropriate data from a large number of sources.

For more specific information about evaluation design and planning, see *Manual, Part II, Chapter 8, Evaluating ADR Programs* .

### Designing an ADR Program Checklist

- ✓ Step 1: Needs Assessment
  - agency mission and structure
  - agency ADR interests
  - nature and number of agency disputes
  - current dispute resolution system
  - alternatives to the current dispute resolution system
  - assistance and barriers
- ✓ Step 2: Program Design
  - develop written ADR policy
  - conform to applicable ADR laws and regulations
  - develop program goals and objectives
  - choose appropriate ADR method(s)
  - set out roles and responsibilities of program administration
  - define criteria for case selection
  - state source(s) for neutrals
  - develop program procedures
  - identify source(s) of settlement authority and approval
  - develop necessary training and marketing plans

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- develop plan for pilot program
- identify sources of funding and resources
- develop tracking and evaluation methodology
- develop implementation plan
- ✓ Step 3: Program Implementation
  - identify sources of management support
  - identify program manager
  - provide appropriate training
  - coordinate marketing and educational efforts
  - provide program procedures and standard forms
  - provide criteria for choosing neutrals
  - provide procedures and forms for evaluation, tracking and reporting
- ✓ Step 4: ADR Program Evaluation
  - identify and clarify ADR goals
  - develop an appropriate methodology
  - develop an analysis and reporting plan